

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3648 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
No. 1 Yes                      Nos. 2 to 5                      No

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DAHYABHAI NATHUBHAI PATEL

Versus

DIRECTOR OF EDUCATION

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Appearance:

MR NM KAPADIA for Petitioner  
GOVERNMENT PLEADER for Respondent No. 1  
MR DC DAVE for Respondent No. 2  
NOTICE SERVED for Respondent No. 3

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 24/06/98

ORAL JUDGEMENT

Rule.

The petitioner, a primary school teacher, was tried for offence under Sections 147, 148, 149, 302, 323 of I.P.C. As the said case was registered against him, he was put under suspension by order dated 17.12.1988. The petitioner was convicted for the said offences by the

judgement of the Sessions Judge, Valsad dated 21.1.1990 and sentenced to life imprisonment. The petitioner preferred appeal against the said judgement of conviction and order of sentence. The petitioner was acquitted by judgement dated 11.10.1993 of this court. However just after his conviction by the trial court, his services were terminated by order dated 30.5.1990 with effect from 28.1.1990. The petitioner was also deprived of suspension allowance with effect from 29.1.1990. The said order was challenged by the wife of the petitioner by way of Special Civil Application before this court which was registered as Special Civil Application No. 5850 of 1993. The said Special Civil Application was withdrawn with a view to file a fresh Special Civil Application as the petitioner was acquitted by the judgement of the Division Bench of this court. The petitioner filed fresh Special Civil Application which was registered as Special Civil Application No. 2879 of 1995. The petitioner was directed to be reinstated by the interim order of this court. The Special Civil Application was finally decided on 30.10.1996. This court set aside the order of dismissal dated 30.5.1990 and directed the respondent to make necessary orders regulating the period spent by the petitioner under suspension as well as the period between the date of termination and date of reinstatement.

The respondents by impugned order dated 10.2.1997 directed to treat the period between 1.1.1988 and 13.5.1988 total 134 days as half pay leave and period between 14.5.1988 and 13.7.1995 total 2616 days on ex-tra ordinary leave.

It is contended by Mr. N.M. Kapadia, learned counsel for the petitioner that as the petitioner has been acquitted and the High court has already directed him to reinstate in accordance with the provisions of sub-Rule (2) of Rule 22 of the Bombay Civil Services Rule the petitioner is entitled to full pay and allowances as if he has not been dismissed or suspended. It is also submitted that before passing the impugned order, the petitioner was not given opportunity of hearing.

On the other hand, it is contended by Mr. Dhaval Dave, learned counsel for the respondent, that simply because a person has been reinstated does not entitle him full pay and allowance for the period of absence from the duty. The competent authority under sub-clause (2) of Rule 152 is required to form an opinion as to whether the Government servant has been fully exonerated?

In order to appreciate the contention of the learned counsel for the parties it will be convenient to read Rule 152 which reads as follows:-

"152 (1) When a government servant who has been dismissed, removed or suspended is reinstated, the authority competent to for the reinstatement shall consider and make a specific order

(a) Regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty; and

(b) Whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority mentioned in sub-rule (1) is of opinion that the Government servant has been fully exonerated or in the case of suspension that it was wholly unjustified the Government servant shall be given the full pay and allowances to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be.

(3) In other case, the Government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe;

Provided that the payment of allowances under clause (2) or (3) shall be subject to all other conditions under which such allowances are admissible.

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In case falling under clause (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose.

Thus, when a government servant who has been dismissed, removed or suspended is reinstated, the competent authority is simultaneously required to pass an order of pay and allowance for the period of absence from duty, upon the formation of the opinion on objective assessment as to whether the person has been exonerated fully of the charge. If the case falls under sub-rule (2) he shall be entitled to full pay and allowance. However, if the authority finds that the Government

servant has not been fully exonerated or is found that the suspension cannot be said to be wholly unjustified, the case falls under clause (3) in such eventuality the government servant shall be given to such proportion of such pay and allowance as the competent authority may prescribe. Proviso to sub-Rule (3) states that payment of allowance under sub-Rule (2) or (3) shall be subject to all other conditions under which such allowances are admissible.

It is also contended by the learned counsel for the petitioner that the authority has formed an opinion arbitrarily without giving an opportunity of hearing to the petitioner. Mr. Kapadia submits that in fact the authority has not formed any opinion. Thus, his submission is that the impugned order is illegal being contrary and unreasonable. This court in the case of STATE OF GUJARAT VS. VRAJLAL HANSRAJ reported in 13 G.L.R. 680 has held while passing any order under clauses (2) or (3) of Rule 152 of B.C.S.R. the competent authority is required to give an opportunity of hearing. Instant case is squarely covered by said case as petitioner was not heard before passing of impugned order. In view of this, the Special Civil Application deserves to be allowed on this short ground alone.

Consequently, the Special Civil Application is allowed. The order passed by the District Education Officer (Primary Education), District Panchayat Education Committee dated 12.2.1997 is quashed and set aside. The District Education Officer will pass a fresh order within a period of three months from today after giving an opportunity of hearing to the petitioner. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service permitted.

(N.N. MATHUR, J)

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